IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 131 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE DN PATEL

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MOHAMMAD RAFIQ ISMAILBHAI SHEIKH & 2 - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MS KRISHNA U MISHRA for the Applicants.
Mr. I.M.Pandya, Addl. PUBLIC PROSECUTOR for the Respondent.

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CORAM : HONOURABLE MR.JUSTICE DN PATEL

Date : 04/08/2006

ORAL JUDGMENT

The present application has been preferred against the order dated 16th February, 2006 in connection with Cr No. I/ 170 of 2005 registered with Gomtipur police station, passed by the learned Metropolitan Magistrate, Court no.10, Ahmedabad, for the reason that the applicants are ordered to be taken into judicial custody upon addition of section 326 of the Indian Penal Code as, lateron, the police came to know that there was a fracture to the injured eye witness, otherwise bail was already granted to the applicants as the original complaint was registered for the offence punishable under

section 324 and other sections of Indian Penal Code.

2. Having heard the learned advocates for both the sides and looking to the facts and circumstances of the case, in my view, the impugned order dated 16th February, 2006 in connection with I Cr. No. 170 of 2005 registered with Gomtipur police station, Ahmedabad passed by the learned Metropolitan Magistrate, Court no.10, Ahmedabad (Annexure “B” to the memo of the application) requires to be quashed and set aside, mainly for the reason that sections of Indian Penal Code can be added by police looking to the facts and circumstances and evidence on the record. So far as arrest is concerned, it is not a mathematical consequence of addition of sections. No subjective satisfaction has been arrived at by the trial court to the effect that the present applicants will not be available to the Court or that they will tamper with the evidence if released on bail. In view of these facts, the impugned order is hereby quashed and set aside so far as arrest of the applicants is concerned. Rule made absolute to the aforesaid extent.

(D.N.Patel,J)

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